mitted not. This seemed to me a rather startling proposition, but after anxious consideration I have to conclude that he was right.

The answer to the question posed must be determined simply by reference to the language of subsection (1) of section 16. The operative words in it are "No contract for the repayment by a borrower of money lent to him by a moneylender". There is no doubt that each of these three transactions was a contract for the repayment by a borrower of money, the defendant clearly being a borrower. Was it also a contract for the repayment by a borrower of money lent to him by a *moneylender?* The word "moneylender" is defined by the Ordinance. Much stress was laid in the trial court on the fact that each of the loans was interest free. This was because, I think, of the presumption under section 3 which says that —

"any person who lends a sum of money in consideration of a larger sum being repaid shall be presumed until the contrary be proved to be a moneylender".

In the event the learned president found that, as the parties were in fact friends (they served on the committee of the M.I.C. branch at Bentong, the plaintiff being its President) and the loans were interest free and friendly loans, subsection (1) of section 16 did not apply.

With respect I do not agree with him. Section 3 only raises a presumption in the circumstances mentioned in it. It is still open for the defendant to prove by other means that the plaintiff was moneylender within the meaning of the Ordinance. Not every one who lends money is a moneylender. He must be a person who is in the business of moneylending, for section 2 of the Ordinance says that —

" 'moneylender' includes every person whose *business* is that of moneylending or who carries on or advertises or announces himself or holds himself out in any way as carrying on that *business*..."

The section goes on to exclude certain categories of persons who lend money, from the definition.

I do not see how the court can hold that a person who is a licensed moneylender is not a person whose business is that of moneylending. What was the point of the plaintiff having a licence to lend money if he did not intend to carry on the business of moneylending? If the legislature had intended that a licensed moneylender may make an interest-free loan to friends without complying with subsection (1) of section 16, I think it would have included such a moneylender in the light of persons who are not by definition moneylenders.

Mr. Balwant Singh for the plaintiff argues that a licensed moneylender may give loans to friends "as incidentals" without having to comply with subsection (1) of section 16 as, it is said, that provision applies only if the object of the loans is to promote his moneylending business, and Mr. Balwant Singh refers me to page 6 of *Straton and Blackshaw* on Moneylenders where it is stated in a paragraph headed "incidental lending":

"Section 6(d) of the English Moneylenders Act excludes from the definition of a moneylender 'any person ... *bona fide* carrying on any business not having for its primary object the lending of money, in the course of which and for the purposes whereof he lends money'. The lending of money, in order to comply with subsection, must not be the *primary* object of the business."

I do not think that Mr. Balwant Singh's argument can succeed. A person *bona fide* carrying on any business not having for its primary object the lending of money, in the course of which and for the purposes whereof he lends money is also excluded from our definition of moneylenders, see paragraph (c) of the definition in section 2. But here there is no finding that the plaintiff was carrying on any business other than that of moneylending. Secondly, in my opinion a licensed moneylender who lends money interest free to friends must comply with subsection (1) of section 16 even if he carries on another business.

In my judgment, the plaintiff was a moneylender within the meaning of the Ordinance; each of these loans was a contract for the repayment by a borrower of money lent to him by a moneylender within the meaning of subsection (1) of section 16; and as there was no note or memorandum in writing of the contract signed by the parties, none of these contracts may be enforced.

I would therefore allow this appeal with costs.

Appeal allowed.

Solicitors: *Ernest V. Devadason; Singh Bros. & Co.*

LEE LUM SOH v. LOW NGAH

[A.C.J. (Mohamad Azmi J.) July 31, 1972]

[Kuala Lumpur — Civil Appeal No. 25 of 1971]

Landlord and Tenant — Lease for 10 years — Lease void for non-registration — Whether any equitable right in favour of tenant — Monthly tenancy — Notice — National Land Code, ss. 5 and 225(2).

The appellant appealed against the decision of the magistrate's court ordering him to give up vacant possession of certain premises to the landlord, the respondent. The appellant had entered into possession of the premises under a lease which was not registered under the National Land Code. The learned magistrate found that the agreement of lease was void and that the appellant was in occupation of the premises as a monthly tenant. The agreement had been duly terminated and as the appellant had failed to comply with the notice, he found that the appellant was wrongfully in possession.

Held: (1) as the lease in this case had not been registered, it was void;

(2) the appellant had failed to establish any equitable ground which would justify the court to order specific performance of the agreement;

(3) the learned magistrate was correct in holding that the appellant was a monthly tenant and that the respondent had effectually put an end to the tenancy and was therefore entitled to possession of the premises.

Cases referred to:-

(1) *Central London Property Trust Ltd.* v. *High Trees House Ltd.* [1947] 1 K.B. 130.

(2) *Liew Ah Hock* v. *Malayan Railway* [1967] 1 M.L.J. 53 at page 55.

(3) *Lee Ah Low* v. *Cheong Lep Keen & Anor.* [1970] 1 M.L.J. 7 at page 8.

(4) *Tan Joo Kwang* v. *Chop Sin Hup Kiat* (1921), 14 S.S.L.R. 176.

(5) *S.A.S.P.K. Ramasamy Chetty* v. *Fan Seng Yew* 1 F.M.S.L.R. 354.

(6) *Yong Tong Hong* v. *Siew Soon Wah & Ors.* [1971] 2 M.L.J. 105 at page 107.

(7) *Inwards* v. *Baker* [1965] 2 W.L.R. 212 at page 213.

CIVIL APPEAL.

K. L. Rekhraj for the appellant.

H. Jayaram for the respondent.

Mohamed Azmi J.: This is an appeal by the tenant of shop-house No. 22, Main Road, Ulu Bernam, Tanjong Malim, against the decision of the Magistrate's Court in Kuala Kubu Bharu, ordering him to give up vacant possession of the ground floor of the premises to the landlord, the respondent herein.

The brief facts of this case may be stated as follows. By a written agreement made on August 17, 1968, the respondent let the ground floor of the premises (except for the resting room) to the appellant and one Lee Moh at a rent of $100 per month for a period of ten years in consideration of a sum of $200, being two months' advanced rental. As a result of various acts of nuisance alleged to have been committed by the appellant and Lee Moh as contained in paragraph 3 of the statement of claim, the respondent through her solicitors issued a notice to quit dated January 13, 1970 calling upon both of them to give vacant possession of the demised premises on or before July 15, 1970. Since they failed to comply with the said notice, eviction proceedings were initiated against them. The appellant's case can be summarised by referring to paragraph 2 of the amended statement of defence which states:

"The 1st named defendant admits that there was an agreement and holds the plaintiff strictly to the said agreement; and in any event the 1st named defendant pleads the doctrine of estoppel against the plaintiff on the said agreement. Further the 1st named defendant seeks the protection of the Control of Rent Act, 1966".

At the hearing before the learned Magistrate, difficulty was encountered in serving the summons on Lee Moh, the co-tenant. Accordingly, the respondent withdrew her action against him and thereby leaving the present appellant as the sole defendant in the case.

The essence of the respondent's argument before the learned magistrate was that by virtue of the agreement — which was admittedly not registered under the National Land Code — the appellant was in occupation of the premises as a monthly tenant paying rent at $100 per mensem, and that the said agreement was duly terminated by the six months' written notice dated January 13, 1970, and, as the appellant has failed to comply with the said notice, he was therefore wrongfully holding possession of the demised premises. The appellant's case was that he had been in occupation of the premises for about one and a half years as the lawful lessee of the respondent pursuant to the said agreement which gave him a lease for ten years. He therefore held the respondent strictly to this agreement notwithstanding the non-registration of the lease as required under the National Land Code. It was submitted that the respondent's allegation of nuisance had not been proved, and that even if the lease created by the agreement was void for non-registration it was nevertheless valid between the contracting parties, and the respondent was therefore estopped from denying it. For this proposition, reliance was placed on the principle enunciated by Denning J. (as he then was) in *Central London Property Trust Limited* v. *High Trees House Limited*[1] where it was held that where a person made a promise that was intended to create legal relations, and which was with the knowledge of the promissor, to be acted upon by the promisee and was in fact so acted upon by the promisee, that person is bound to honour the promise. The case of *Liew Ah Hock* v. *Malayan Railway*[2] was also relied upon on the issue of promissory estoppel.

At this stage, it may be convenient to refer to the relevant terms and conditions of the agreement, which refer to the respondent as "the 1st party" and the appellant and Lee Moh as "the 2nd party". They are as follows: —

"1. In consideration of the sum of $200 now paid by the 2nd party to the 1st party (the receipt thereof, the 1st party hereby acknowledges) as two months' advanced rental for the said premises No. 22, Main Road, Ulu Bernam, Tanjong Malim, Selangor at an agreed monthly rental of $100.

2. The tenancy shall be of a period of 10 (ten) years from date of this agreement at a rental of $100 only a month, which rental shall be calculated as from 15 days after the 2nd party has completed all repairs and renovations of the said premises, notwithstanding whether the 2nd party has commenced business or not.

4. If the said shop becomes dilapidated and the 1st party fails to repair the said shop, the 2nd party shall take the initiative to repair same and the expenses incurred thereto shall be recoverable by the 2nd party from the monthly rental of $100 to an extent of $30 a month until full satisfaction. Expenses incurred for the repair of the room occupied by the 2nd party shall be borne by the 2nd party.

5. The 2nd party shall rent the whole of ground floor of No. 22, Main Road, Ulu Bernam, of 20 feet wide and 120 feet long with the exclusion of a cemented resting room which shall be used by the 1st party and the 2nd party shall not use it unless agreed.

6. All repairs and renovations to the said premises of the ground floor before this tenancy is effected shall be borne and paid by the 1st party but, the money for such repairs and renovations shall in the 1st instance be advanced by the 2nd party. The money so advanced by the 2nd party for the repairs and renovations as hereinbefore recited shall be recovered by the 2nd party from the monthly rental of $100 at the rate of $30 per month until full realisation thereof. In the event of the 2nd party desires to determine the tenancy, he reserves the right to recover the advance made herein for the repairs and renovations from the entire monthly rental of $100 until full satisfaction before the 2nd party vacates the said premises.

7. During this agreement, the 2nd party shall have the right to do whatever business he deems fit and desirable besides illegal and unlawful business, such as gambling. The 2nd party is entitled to dismantle any additions and alterations which he had made at the time of his vacating the said premises, provided always, that any damages arising from the dismantle shall be borne and paid by the 2nd party.

8. The 2nd party shall not assign the right of this agreement and upon determination of this tenancy, he shall deliver the said premises to the 1st party.

18. The 2nd party shall have the right to decorate the whole of the ground floor rented out to him in any way and style he wishes on his own expenses while this agreement is in force. The 1st party shall not interfere with the 2nd party."

In his grounds of judgment, the learned magistrate has this to say:

"In deciding as to the exact nature of the legal relationship between the plaintiff and the defendant pursuant to the terms of the agreement, the court must have regard to the real intention of the parties. In this respect there is no need to go beyond the agreement itself because clause 6, *inter alia*, specifically states '... In the event of the 2nd party (meaning the defendant) desires to determine the tenancy, he reserves the right to recover the advance made herein for the repairs and renovations from the entire monthly rental of $100 until full satisfaction before the 2nd party vacates the said premises'. This is a right characteristic of a tenancy and not a lease.

On these considerations plus the fact that rental is always payable monthly, that is on the 15th of each calendar month, I therefore hold that the agreement executed between the plaintiff and the defendant on the 17th of August, 1968, has created a month to month tenancy and not a lease for ten years."

Having come to the conclusion that the demised premises were held by the appellant under a monthly tenancy, the learned magistrate also found that the respondent had effectively put an end to the said tenancy by giving the appellant six months' notice to quit. In the event, he gave judgment for the respondent.

Before me, the decision of the learned magistrate is attacked on a number of grounds. However, both here and in the lower court. the appellant does not dispute that the premises in question are not protected by rent control legislation. The fact of non-registration of the lease agreement is also not in dispute. As regards allegation of nuisance, the finding of fact by the learned magistrate that both parties are equally responsible for the various acts is not being challenged. In any event, the issue is considered as of secondary importance and is not being pursued by the appellant. The questions that arise for my determination in this appeal are, firstly, whether the agreement entered into between the parties which purports to give the appellant a lease of the ground floor of the premises for ten years effective from August 17, 1968 is void for non-registration under the provisions of the National Land Code; and, secondly, if the lease is so void, whether equity should apply in this case so that the ten years' lease be specifically enforced at least for a period of three years; and, thirdly, whether the learned magistrate is justified in coming to the conclusion that estoppel does not apply and that the agreement merely creates a monthly tenancy determinable at the instance of the respondent by a six months' notice to quit.

On the first question, having regard to the provisions of section 221 and to the definition of "lease" under section 5 of the National Land Code and the principle enunciated in the case of *Lee Ah Low* v. *Cheong Lep Keen & Anor.*,[3] I am of the view that the agreement of August 17, 1968 is void as a lease for non-registration. (See also *Tan Joo Kwang* v. *Chop Sin Hup Kiat*[4] and *S.A.S.P.K. Ramasamy Chetty* v. *Fan Seng Yew*[5]). Further, section 225(2) of the National Land Code provides that no lease or tenancy may be granted to two or more persons or bodies otherwise than as trustees or representatives. Although this point has not been argued by counsel, to my mind, the fact that the agreement purports to give a lease both to the appellant and Lee Moh in their personal capacities also renders the lease void.

On the second question, it is abundantly clear that the appellant has gone into occupation of the premises and has been paying monthly rent under a void lease. The correct principle to be applied in cases where premises are let for a term of years at a monthly rent under a lease void for non-registration can be found in a judgment of the Federal Court in the case of *Yong Tong Hong* v. *Siew Soon Wah & Ors.*[6] where at page 107 His Lordship the Chief Justice stated:

"Every case must, of course, be decided according to its peculiar facts. The distinction must be drawn between cases where the tenant can resist his landlord's claim on equitable grounds and others where he has no such grounds. An example is *Lee Ah Low* v. *Cheong Lep Keen*, a recent decision of this court. There the tenant was given a tenancy for 80 years during which period the landlord agreed not to increase the rent unless the assessment rate was raised by the Municipality and the tenant was at liberty to use the premises for carrying on any type of business. The monthly rent was $100 and the tenant was given a month's notice to quit. No equity had been created in his favour, as in *Inwards* v. *Baker* by his going into possession. Accordingly the sole question to be determined was whether the premises were held under a yearly or monthly tenancy by reason of the lease being void for non-registration. That case was not as fully argued as it might have been, nor were the cases cited which have been brought now to our attention and carefully distinguished. The ratio decidendi, therefore, should not, in my view, be regarded as a binding precedent for all cases where premises are let for a term of years at a monthly rent under a lease void for non-registration."

Thus, although the *ratio decidendi* in *Lee Ah Low's* case should not in his Lordship's view be regarded as a binding precedent for all cases of this nature, it is clear that each case must be decided according to its particular facts. It is equally clear that where an agreement for lease is void for non-registration, the tenant can only be protected by equity if he has equitable grounds. In the case of *Inwards* v. *Baker*[7] for instance, where a son had built a bungalow on his father's land largely by his own labour and had contributed half the cost of construction, in allowing the appeal of the son against the order for possession of the bungalow by the trustees of his father's will, the Court of Appeal held that where a person has expended money on the land of another in the expectation, induced or encouraged by the owner of the land, that he would be allowed to remain in occupation, an equity was created such that the court will protect his occupation of the land; and the court had power to determine in what way the equity so arising could be satisfied. In *Liew Ah Hock* v. *Malayan Railway*[2] in dismissing the plaintiff's claim for a declaration that he was entitled to remain in occupation of a certain land and premises, Winslow J. held that the plaintiff had not spent money on the land so as to create an equity such that the court will protect his occupation of the land. In the course of his judgment, his Lordship has this to say:

"In my opinion, there was no expenditure of money on the land in the present case which is at all comparable with the expenditure of money in projects such as the building of a house as was the case in *Inwards* v. *Baker, supra*, and it is clear from the authorities preceding that case that money laid out on the land or expended on the land of another means money directed towards physical or structural improvements to the land such as the erection of houses, wharves and jetties, etc."

Similarly, in *Yong Tong Hong* v. *Siew Soon Wah & Ors.*,[6] the Federal Court held that as the tenant had

expended money on the land of another in the expectation of being allowed to remain in occupation, equity would protect his occupation of the land. In that case, the tenant was requested by the predecessor in title of the premises, which was then nearing completion, to pay $8,000 on his own behalf to the building contractor. The amount was not recoverable under the agreement and, in fact, it was the consideration of the contract. Thus, in the present case, unless the appellant can show some equitable grounds which would justify the court to order specific performance of the agreement which is void as a lease, equity cannot come in to assist him. It is relevant to observe at this stage that, unlike in *Yong Tong Hong's* case, the respondent's claim to re-possession is not met by a counterclaim for specific performance, which the appellant could have done if the case had been transferred to the High Court. Consequently, no argument was raised before the learned magistrate under what equitable grounds the appellant was seeking for specific performance of the agreement. Be that as it may, on the facts of the present case, I find the appellant has failed to establish any equitable ground for the purpose of resisting the respondent's claim. First, although the agreement did provide that the ground floor of the premises was to be used by the appellant for business purposes and that the respondent should not interfere with the appellant, it is conceded by learned counsel for the appellant that there was, in fact, no proper evidence adduced that the demised premises were in fact used for such purpose. It is not at all clear what business, if any, was carried out by the appellant at the said premises. Secondly, as contained in clause 1 of the agreement, the lease was given to the appellant solely on the consideration of the sum of $200 being two months' advanced rental for the said premises. All expenses or repairs of the premises are to be borne by the respondent although under clause 4, if the said premises become dilapidated and the respondent failed to repair the same, the appellant shall take the initiative to carry out the repair and the expenses incurred thereof shall be recoverable by the appellant from the monthly rental of $100 to the extent of $30 a month until full satisfaction. Under clause 6, it is reiterated that the money so advanced by the appellant for the repairs and renovations shall be recoverable by the appellant at the rate of $30 per month until full realisation thereof. It is further provided that in the event of the appellant desiring to determine the tenancy he reserves the right to recover the advance made therein for the repairs and the renovations from the entire monthly rental of $100 until full satisfaction before the appellant vacates the said premises. From the supplementary clauses in the agreement which was inserted on March 21, 1969, it is provided that "the grand total amount for all repairs and renovations incurred by the appellant hereof as referred to in clauses 3 and 6 is $2,175.90 only". Out of this sum, there is, however, no evidence to show and nor are counsel able to ascertain how much is still due to the appellant. Whatever may be the amount, the appellant can, of course, recover it from the respondent. In my view, the advances made for the repairs and renovations of the premises are not sufficient for an equitable right to be created in favour of the appellant. The sums expended by the appellant are clearly advances which under the agreement are recoverable from the respondent. The present case can, therefore, be clearly distinguished from *Yong Tong Hong's* case where the sum of $8,000 expended by the tenant was the consideration of the agreement and was not recoverable.

Under the circumstances of the present case, I find the appellant has failed to establish any equitable ground and, as such, the agreement should not be specifically enforced even for a period of three years.

On the third question, since the appellant's entry into the premises is not coupled with any equitable interest and as he has been paying monthly rent under a void lease, the effect of such an entry can be found at page 3 of *Woodfall* on Landlord and Tenant, Volume I (26th Edition), which states:

"... A contract for a lease is not in itself a demise, but is merely an agreement that the intending lessor shall grant a lease and that the intending lessee shall accept the same. Such a contract does not of itself create a legal relationship of landlord and tenant, *but it has long been established that so soon as the tenant enters under the agreement the relationship arises and he becomes a tenant at will,* and that when he pays, or expressly agrees to pay, any part of the annual rent thereby reserved, his tenancy at will changes into a tenancy from year to year, upon the terms of the intended lease, so far as they are applicable to and not inconsistent with a yearly tenancy. The same rule applies to entry under a void lease."

Thus, the remaining issue to be decided is whether the demised premises were held by the appellant under a yearly or monthly tenancy by reason of the lease being void for non-registration. On this issue, the learned magistrate had found that the appellant was a monthly tenant having regard to the manner of payment of rent and the other terms and conditions of the agreement. I do not think I can quarrel with the finding of the learned magistrate on this point; nor with his finding that the respondent had effectively put an end to the said tenancy by giving the appellant six months' notice to quit. As regards estoppel, which appears to be the main defence of the appellant in the lower court, I also agree with the learned magistrate that it does not arise in this case. In the first place, both the agreement and the terms of the agreement are not denied by the respondent. Further, it would appear that both parties in this case did not realise that an unregistered agreement was void as a lease for a term exceeding three years; and, as such, no question of estoppel can ever arise when both parties are labouring under a mistake of law, and one party is not more to blame than the other. Estoppel arises only where the respondent by his acts or misconduct makes a representation to the appellant of a certain state of facts which are acted upon by the appellant to his detriment; it is only then that the respondent is estopped from setting up a different state of facts.

For the above reasons, I would therefore dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *K. L. Rekhraj & Co.; Skrine & Co.*